In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1418

PAUL O. JOHNSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals is not yet reported (Pet. App. 1-17). The trial court's opinion is reported at 284 F. Supp. 273 (Pet. App. 18-48).

JURISDICTION

The judgment of the court of appeals was entered on April 21, 1969. On May 21, 1969, the petition for a writ of certiorari was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence supports petitioner's conviction for making a false claim and false statements in an application for an annual agricultural conservation payment relating to farmland he owned.

STATEMENT

After a jury trial in the United States District Court for the Western District of Missouri, petitioner was convicted on two counts of a four-count indictment which charged the making of a false claim and the making of false statements, in violation of 18 U.S.C. 287, 1001.[1] On April 10, 1969, he received concurrent sentences on both counts of sixty days' imprisonment and a $10,000 fine, plus the imposition of court costs.

The evidence showed that in 1963 petitioner and his wife were the owners of certain land located in the city of Springfield, Missouri, a farm which they had placed under a soil conservation reserve program for the period 1960-1969 (II R. 23, 26, 30).[2] Under this program, administered by the United States Department of Agriculture and operated through county committees, petitioner was to receive annual pay-

[1] The first two counts, involving similar charges relating to the annual conservation payment made to petitioner for the year 1962, resulted in acquittals (see Pet. App. 1, n. 1, 6, n. 6).

[2] "R." refers to the six-volume record on file with the Clerk of this Court. The four-volume trial transcript is contained in volumes II-V of the record below, and is consecutively paginated.

ments of approximately $17 per acre (Pet. App. 7) for protecting his land from wind and water erosion. To accomplish this, petitioner was required to remove the farm land from crop production and agree not to disturb the vegetation cover of the land for the ten-year contractual period (II R. 30). The land in the soil bank, petitioner's entire farm, was subject to annual compliance checks, usually made during the summer, by the local committee (II R. 142, 162-164). Payments made after the inspection were for calendar years (II R. 63, 217).

The contract was subject to modifications and penalties. Petitioner was required to notify the local committee when he sold or lost control of any portion of the land (II R. 32, 61-62). Prior approval of the local committee was required before the land could be used for non-agricultural purposes (II R. 33). A transfer of ownership or control, any use of the farmland which resulted in disturbing the vegetation cover (such as the laying of sewer pipes or the building of houses), or the harvesting of any crop would result in reduction of the annual payment, based on the portion of the land affected by these changes (II R. 33, 47, 64-65, 151, 161-162; IV R. 538, 554, 558; V R. 727). The contract also required that prior annual payments made on acres so removed from the soil bank were to be refunded to the government (II R. 85; V R. 722).

Petitioner was a land developer (II R. 134; IV R. 557). His previously developed homesites were excluded from his 1959 soil conservation contract, covering the 1960-1969 period (II R. 134, 194). When

he placed his remaining farmland under the soil conservation program, he was told that development of part of the land would result in that area's being ineligible for conservation payments (II R. 196). In 1960 he was informed that sale of the land to a development corporation, of which he was a member, would result in the termination of the soil conservation contract (II R. 87). The 1961 and 1962 annual inspections resulted in the discovery of unauthorized uses of some of petitioner's soil conservation land. As a result, the county committee reduced the acreage covered by the agreement (II R. 97-98, 142, 162-163, 197-198; IV R. 536, 538, 552). The 1961 diversion resulted in a caution to petitioner to seek prior authorization from the local committee before breaking the ground cover. In 1962, when again cautioned, petitioner told the committee he had forgotten about the previous caution (IV R. 550-551, 557).

The 1963 annual inspection was conducted in August (II R. 102-103). On October 8, 1963, petitioner presented himself to the local committee seeking his annual payment (II R. 91-93, 108). Petitioner said he had obligations to meet as he had to pay off a bank note (V R. 752). He was issued a federal sight draft in the amount of $4317.20 (II R. 91-93; V R. 731), after he had signed an application and annual payment statement for the year 1963 (II R. 91), including a certificate which read (Pet. App. 7):

> "I hereby certify that for the program year indicated above I have complied with and will comply with all the requirements under the Conservation Reserve Program * * *.

Before receiving his 1963 soil conservation payment petitioner was questioned by the county committee as to the rumored sale of his property (II R. 108-112, 144), and thus as to his entitlement to soil bank money for that year (II R. 161-162). Petitioner replied that he had not sold the property, but had merely entered into a contract to sell part of it for homesites, effective in 1964 (II R. 119, 201; IV R. 540; V R. 779-780). He said that the contract might not go into effect even then (V R. 787). He was told that any digging or breaking of the vegetation cover of the land during 1963 would be a violation of the soil bank agreement (II R. 201-202; IV R. 540-541, 561; V R. 787). Later, during November 1963, the committee became aware of the construction of homes and the harvesting of hay on the conservation reserve land, in areas whose acreage had been included in the 1963 computation of the soil bank payment to petitioner (II R. 162-163, 206-207, 216-217; III R. 228-232; IV R. 542). The committee then wrote petitioner asking him to come in and discuss the matter, but he did not appear before it (II R. 122, 156, 160).

Subsequent investigation revealed that in 1962 petitioner had conveyed 39 acres of the soil conservation land to a building material supplier, Kriedel (V R. 684, 696). In 1963 petitioner and Kriedel agreed to share development costs in converting the farmland into homesites (V R. 687). In May 1963 they had plats made (III R. 234), and in July 1963 they agreed to sell some of their building lots to a builder, Cantrell (V R. 743, 760-761). This involved approxi-

mately 33 acres of petitioner's farmland (III R. 292). In July 1963 they also agreed to sell to a builder named Gibson approximately 60 acres, 57 of which belonged to petitioner (III R. 305; V R. 689-690, 740). The Cantrell contract was for developed homesites (V R. 743), and petitioner thereafter contracted with others, including one of his own corporations, to have sewer, water and gas lines laid and roads built. Work commenced on these projects during August and continued during the balance of 1963 (IV R. 477-480, 496, 520-521; V R. 746, 749). The Gibson contract was for unimproved land, but required Gibson to convert the property into finished homesites. During August 1963, pursuant to his contract, Gibson commenced laying the necessary pipelines and erecting houses on the soil bank land (III R. 308-310, 325, 330, 342-344, 355; IV R. 416-421). Gibson paid the real estate taxes for the period September-December 1963 on the property he developed (III R. 323-324), and paid interest to petitioner on a purchase money mortgage from August 27, 1963 (III R. 324; V R. 746-747).

ARGUMENT

Petitioner contends that a criminal prosecution for making a false claim or false statements, in violation of 18 U.S.C. 287 and 1001, cannot validly be based on the certificate of compliance he signed (*supra*, p. 4) because the question whether he did or did not comply with the contract was one of law, not of fact. However, in order to obtain payment from the government, petitioner certified that he had complied,

and would for the balance of the year 1963 comply, "with all the requirements under the Conservation Reserve Program." This was a statement of fact, on which his claim for money was based, which the jury, on ample evidence, found to have been knowingly false. Clearly, in 1963, petitioner lost the power to control or prevent erosion over the 57 acres of soil bank land that he contracted to sell to builder Gibson. Gibson's contract with petitioner required him to lay pipelines and build roads, and Gibson had to place $12,000 in escrow to insure his performance (III R. 299; V R. 740-741). Moreover, during 1963, petitioner was instrumental in destroying the vegetation cover on an additional 33 acres of his soil bank land that he developed for sale to builder Cantrell. Petitioner also had hay harvested, in violation of his soil bank agreement, after he had inaccurately told one of his employees that the land involved had been taken out of the soil bank (III R. 232). A few days after October 8, 1963, petitioner's soil bank land was a beehive of construction activity, with at least one house in an advanced stage of construction (IV R. 521). In short, the evidence in no sense suggested a good faith error as to the legal requirements under the contract, but rather a deliberate plan to violate the contract.

Petitioner asserts he thought he had the right "after the end of the crop growing season" to do what he wished with the soil bank land (Pet. 3, 4, 5, 14).[3]

[3] Petitioner is factually inaccurate when he states that without penalty he shifted land in two prior years "after the growing season was over" (Pet. 5). He was not authorized to grow

However, at trial petitioner himself claimed that in October 1963 he requested (and received) permission from the county committee chairman to proceed with construction before he started his 1963 construction on soil bank land (V R. 709, 750-752). This indicates, contrary to the present assertion, that petitioner knew he needed authorization to use soil bank land after October. The annual certificate itself, stating that the signer will comply "with all the requirements under the Conservation Reserve Program" (Pet. App. 7), makes clear that continuity of purpose was required, after the October signing, for the entirety of 1963.

Petitioner also complains about the degree of discretion vested in the local committee, arguing that the pertinent regulations are not sufficiently explicit (Pet. 5, 14). While the committee may modify a contract so as to remove land devoted to non-agricultural uses from the coverage of the agreement, the committee does not have the power to remove such land and still authorize full payment on soil bank land on which houses are being erected (II R. 64-65). It is clear that the committee could not have authorized the conversion of the land and yet permitted the

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anything (II R. 98-100), and each year he received a reminder of this (II R. 99). His payments were reduced in 1961 and 1962, and the 1961 reduction was made as a result of a July inspection (II R. 97-98), long before the end of the Missouri growing season (II R. 51-52). The 1962 violation was detected in October and thus occurred earlier (II R. 164). In any event, a "crop year", or end of growing season, has no application to the soil conservation program (II R. 51-52, 217).

submission of petitioner's statement and payment of his claim. Any contract modification which served to reduce the acreage would have the necessary effect of reducing the amount due to petitioner. The regulation on which petitioner relies itself provides that "[t]he effective date of the contract modification shall be the date on which the county committee determines that steps were taken to start the conversion to non-agricultural use" (Pet. App. 49). Thus, the regulations did set forth intelligible guidelines for action by local committees (see also Pet. App. 43). See *Arizona* v. *California*, 373 U.S. 546, 594; *Lichter* v. *United States*, 334 U.S. 742, 785; *Kay* v. *United States*, 303 U.S. 1, 9; *White* v. *United States*, 395 F. 2d 5, 9 (C.A. 1), certiorari denied, 393 U.S. 928.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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